

1 JUDGE CHACHKIN: I'll let the answer sustain.

2 BY MR. HOLT:

3 Q I'd like to provide you with a document, a document,  
4 and I'm not going to ask that it be mark for identification,  
5 but it's a request for production of documents that was served  
6 on Glendale by Trinity Broadcasting in the last phase of the  
7 proceeding. Do you have a copy?

8 A No, I don't.

9 Q Do you have that document before you?

10 A I have the document. The request for production? I  
11 have it.

12 Q If you would turn to page twelve of that document,  
13 specifically to --

14 A Does this document, just help me, does this document  
15 refer to the, to the first Glendale issue?

16 Q Yes it does.

17 A It does not refer to the issue that we're trying  
18 now. Is that correct?

19 Q This document was generated during the first,  
20 earlier phase of the proceeding, yes.

21 A So, it doesn't relate to this issue.

22 Q I'd like to ask you the questions, Mr. Cohen. If  
23 you would please just review the document.

24 A No, I want, Your Honor, I just want to make sure  
25 that I understand what this document is about, that's all. I

1 want to make sure that I understand this, whether this  
2 document is --

3 JUDGE CHACHKIN: If you look at page 2, it says what  
4 the subject issue is that this document relates to.

5 WITNESS: Well, thank you, Your Honor. I didn't  
6 know what --

7 JUDGE CHACHKIN: Go ahead, Mr. Holt.

8 BY MR. HOLT:

9 Q Now, Mr. Cohen, if you would turn to page twelve of  
10 the document, specifically to request number 28. It calls for  
11 the production by Glendale of all documents, documents  
12 relating to any contacts or communications between or among  
13 principals, employees, agents, attorneys, representatives or  
14 consultants of Raystay concerning the construction or  
15 operation by Raystay of the unbuilt Lancaster station. I  
16 believe if you proceed through request number 29 and thirty,  
17 actually 29 also requests similar documents relating to the  
18 construction or operation of the Lebanon station. I probably  
19 misspoke there, it calls for the same documents, not just  
20 similar. Then request number 30 and 31 calls for all  
21 documents relating to any action or steps undertaken by  
22 Raystay toward construction of the unbuilt Lancaster or  
23 Lebanon station. Do you see that?

24 A I see it.

25 Q It's an accurate reading of those requests?

1           A     I don't know. I didn't, I didn't, I didn't follow  
2 your reading, I just, the documents speak for themselves.

3           Q     Well, they're not, they're not in the record and I  
4 want you to confirm that my reading was accurate.

5           A     Well, I wasn't, I did not listen to your reading  
6 that carefully, but I will, I mean I'll accept you're an  
7 honorable man, that you read it into the record right. I'm  
8 not going to quibble with you on that.

9                   JUDGE CHACHKIN: What's the question?

10                  BY MR. HOLT:

11           Q     Now, the question is, that the letter dated  
12 August 8, 1990, which has been identified as TBF Exhibit 294  
13 for identification, was not produced in response to what you,  
14 what I just read, was it?

15           A     I don't know if it was or not. I don't know.

16           Q     Who would have that knowledge?

17           A     John Schauble and Gene Bechtel.

18           Q     Mr. Bechtel wasn't involved in the prior issue, was  
19 he?

20           A     Oh, you're asking me whether, well, I don't --

21           Q     Yes --

22           A     Was it, was it produced in connection with this  
23 issue. I do not know whether it was produced in connection  
24 with the last issue.

25           Q     I, I presume that you reviewed your files and the

1 files of Glendale in order to identify all relevant documents  
2 that had been requested by Trinity, correct?

3 A John Schauble and I did.

4 Q And, my question to you, sir, is, is it not a fact  
5 that the August 8, 1990 letter that's been identified as TBF  
6 Exhibit 294 for identification was not produced in response to  
7 Trinity's motion?

8 A I have no idea. It may have been, it may not have  
9 been. I simply don't know. It's a truthful answer. I have  
10 no knowledge on that point.

11 Q Isn't it a fact that the legal invoice dated  
12 November 9, 1990 from Cohen and Berfield's offices was not  
13 produced in response to Trinity's request for production of  
14 documents in the earlier phase of the proceedings?

15 A I can't answer that either, I don't know.

16 Q Isn't it true that the time records attached to that  
17 -- records that are found at TBF Exhibit 292, that relate to  
18 the November 9, 1990 Cohen and Berfield invoice were not  
19 produced during the, in response to Trinity's motion for  
20 production of documents during the last phase of the  
21 proceedings?

22 A I don't know.

23 MR. HOLT: Mr. Schauble, I would request a  
24 stipulation that those documents were not produced.

25 MR. BECHTEL: I'll respond to that. What is the,

1 what is the relevance of that. The, documents are requested,  
2 that you, that you requested, were all documents relating to  
3 any actions or steps undertaken by Raystay for construction?

4 MR. HOLT: I think you might be misreading, too. If  
5 you look at request number 28.

6 JUDGE CHACHKIN: No, no, no.

7 MR. HOLT: Twenty-eight and 29.

8 JUDGE CHACHKIN: You didn't have a specific thought  
9 which you were trying at that time so I assume any responsive  
10 document was predicated on the issue that would seem, was  
11 involved at that time.

12 MR. SCHAUBLE: Your Honor, it was the Lancaster and  
13 Lebanon.

14 JUDGE CHACHKIN: Which was the Lancaster and Lebanon  
15 issue. It had nothing to do with Red Lion.

16 MR. HOLT: Yes, Your Honor. But bringing the  
17 discovery --

18 JUDGE CHACHKIN: Well, I don't want to get into  
19 this, this is ridiculous. The, if you felt you didn't get all  
20 the documents you were entitled to at that time, you should  
21 have asked for it. I'm not going to go back in to argue the  
22 interpretation of whether it should have been produced or not  
23 produced. I don't think anything can be served by that  
24 purpose. I'm not going to permit any further questions along  
25 this line. What should have been contained under your, under

1 the, under your request and as it related to the issue and  
2 what you're entitled to or not, I'm not gonna permit any,  
3 that. We finished with that issue. We're now on to a new  
4 issue.

5 MR. HOLT: Yes, Your Honor.

6 BY MR. HOLT:

7 Q Mr. Cohen, isn't it a fact, that the compliance  
8 program was never considered to be relevant to the operation  
9 of the low power construction permits until after the issue  
10 had been designated in this case?

11 MR. BECHTEL: I object.

12 JUDGE CHACHKIN: What's the basis of your objection?

13 MR. BECHTEL: Well, he's going back to the previous  
14 issue again.

15 JUDGE CHACHKIN: What's your response?

16 MR. HOLT: Well, Your Honor, if any of these earlier  
17 requests call for the production of all documents relating to  
18 the construction and operation of the low power construction  
19 permits and the documents were not produced at that time and I  
20 presume that a thorough search of the files was conducted in  
21 order to make sure that Glendale had complied with the request  
22 so, my question is, were those documents not produced because  
23 they weren't considered at that time to be relevant to the  
24 construction and operation or, I guess that's what I'm seeking  
25 to determine. That it's a state of mind.

1 JUDGE CHACHKIN: I assume a decision was made in  
2 good faith that those documents were not relevant to the issue  
3 which we then had before us.

4 MR. HOLT: Yes, Your Honor. And I'm seeking --

5 JUDGE CHACHKIN: But that was a different issue than  
6 we have now before us.

7 MR. HOLT: I'm seeking to determine whether that  
8 decision was based on the, the thought that the documents  
9 could not relate to the operation of the low power stations.  
10 And that's the question that I posed.

11 JUDGE CHACHKIN: The low power stations were not  
12 operating at that time. Only Red Lion had a CP.

13 MR. HOLT: Yes, Your Honor.

14 JUDGE CHACHKIN: So what, what does that have to do  
15 with Lebanon and Lancaster?

16 MR. HOLT: Well, there's been testimony by the  
17 witness that he believes the compliance program related to the  
18 operation of the low power stations and my, my question is,  
19 isn't that a belief that was developed only after this issue  
20 had been designated?

21 JUDGE CHACHKIN: Well, obviously that couldn't be  
22 the case because they made the allocation and they included it  
23 in what they told the Commission long before any of these  
24 issues were designated. They took the position that that was  
25 proper allocation. So it wasn't developed after that point in

1 time.

2 MR. HOLT: Well, I guess --

3 JUDGE CHACHKIN: I mean, you may disagree with the  
4 principle but the fact of the matter is they made the  
5 allocation on that basis and they gave you the computations  
6 that were made at the time that they made that determination  
7 that the allocation was proper so, it's certainly wasn't  
8 something that came up after the issued were added.

9 MR. HOLT: It's a different position with respect to  
10 the relevance of the compliance program at the time that these  
11 documents were called for. But we're not, I'm not going to  
12 pursue this.

13 JUDGE CHACHKIN: Well, you're entitled to take any  
14 legal position you want, Mr. Holt.

15 MR. HOLT: Thank you, Your Honor. I have no further  
16 questions, Mr. Cohen.

17 WITNESS: Thank you.

18 JUDGE CHACHKIN: Wait a minute.

19 WITNESS: I understand that, I've been here once,  
20 I've been around long enough to know that I have more  
21 tormentors.

22 JUDGE CHACHKIN: Well, I, you wouldn't say that  
23 about the girl, would you?

24 WITNESS: I'll expect --

25 MR. TOPEL: Is that on the record?



1 JUDGE CHACHKIN: Why not?

2 MR. SCHONMAN: I just have a few questions.

3 CROSS EXAMINATION

4 BY MR. SCHONMAN:

5 Q Is it true that you were involved exclusively at  
6 your law firm in working on the compliance program for  
7 Raystay?

8 A I don't understand your question. Was I  
9 exclusively? John and I worked on the compliance program.

10 Q All right. Now, you're aware of the amount of work  
11 that you performed on the compliance program, I assume. Is  
12 that correct?

13 A Well, when you say I am aware, I remember I spent a  
14 lot of time on it but I couldn't tell you how many hours I  
15 spent on it.

16 Q That's okay. And are you at least roughly aware of  
17 the amount of time that Mr. Schauble worked on the compliance  
18 program?

19 A I recall that John spent probably more time than I,  
20 we both spent a lot of time. But I couldn't tell you how many  
21 hours John devoted to it.

22 Q As you sit here today, Mr. Cohen, are you able to  
23 quantify, in any way that you wish, either percentage, hours,  
24 dollar figures, are you able to quantify how much of the  
25 compliance program is specifically and directly related to the

1 Red Lion CP?

2 A I couldn't do that. I've never given any  
3 consideration to that. I, I, I've never, never given  
4 consideration.

5 Q All right. Would you like to take a stab at it now?

6 MR. BECHTEL: Well, I would object. We have the  
7 same foundation that he went through that analysis as a fact,  
8 as a matter of fact and for the record, he has not being  
9 qualified as an expert witness to express any such opinion.

10 JUDGE CHACHKIN: The man who did make the allocation  
11 has testified and you had an opportunity to question him. I  
12 think it's inappropriate to ask this witness to attempt to  
13 make an allocation.

14 MR. SCHONMAN: Would, Your Honor, I'm, I'm not  
15 asking the witness to verify the allocation that Mr. Berfield  
16 made. I'm asking the witness if he can give me his best  
17 estimate as he sits here now, how much of the time that he  
18 worked on the compliance program that was devoted to the Red  
19 Lion CP.

20 JUDGE CHACHKIN: Well then, that, that indicates, of  
21 course, that he has to recall of all that was done four years  
22 ago, that he did four years ago. I think that's an impossible  
23 path to ask somebody. I mean I think, obviously, what he  
24 would have to do is go over all the invoices, go over all his  
25 records, talk to Mr. Schauble, before he can come to any kind

1 of conclusion. How he, sitting here four years later, is  
2 expected to tell you how much time he devoted four years ago  
3 to this specific aspect is, I think is impossible. I'll  
4 sustain the objection. If you wanted such a thing from him,  
5 you should have asked him before the hearing to go back and  
6 prepare something and give his opinion, but not here, standing  
7 here. On the stand suddenly to give you an opinion of the --

8 WITNESS: I couldn't do it.

9 BY MR. SCHONMAN:

10 Q Mr. Cohen, can we turn to Glendale Exhibit 224.

11 WITNESS: What is that, Your Honor --

12 JUDGE CHACHKIN: That's Mr. Berfield's direct  
13 testimony.

14 MR. SCHONMAN Okay. Thank you, thank you, Your Honor.

15 BY MR. SCHONMAN:

16 Q Specifically, page 17.

17 A I have it, Mr. Schonman.

18 Q And as I understand your testimony, this is an  
19 invoice that you prepared?

20 A Correct, sir.

21 Q As you sit here now, are you able to tell me which,  
22 if any, of these services, were performed here specifically or  
23 directly related to the Red Lion CP?

24 A Can I hear the question again?

25 Q Well, I'll shorten the question. As you sit here

1 | now, do any of the services that are shown to have been  
2 | performed on this April 4, 1990 invoice, were any of those  
3 | services performed specifically and directly related to the  
4 | Red Lion CP?

5 |       A     Well, they were all, they were all performed,  
6 | relating to all of the five applications. And Red Lion was  
7 | one of the applications. So, one could say that they were  
8 | all, they all relate to the Red Lion application.

9 |       Q     Let's move on.

10 |       A     Because it was one of the five applications.

11 |       Q     I apologize for interrupting. Let's move on to page  
12 | 19 of the same exhibit. That's a June 4, 1990 invoice.  
13 | That's another invoice that you prepared?

14 |       A     Correct.

15 |       Q     Are you able to tell me as you sit here now whether  
16 | any or all of the matters which are represented on this  
17 | invoice were performed directly or specifically relating to  
18 | the Red Lion CP?

19 |       A     All of the services related to the Red Lion CP and  
20 | the other CPs.

21 |       Q     Let's move on to page 21 of the same exhibit.  
22 | That's another invoice you prepared?

23 |       A     Yes, sir.

24 |       Q     Dated August 7, 1990?

25 |       A     Yes, sir.

1           Q     Can you tell me as you sit here now whether either  
2 or both of the matters listed here were specifically and  
3 directly related to the Red Lion CP?

4           A     Well, the first item had nothing to do with any of  
5 the CPs. The filing of the registration statement for Metal  
6 Township. That's, has, that had nothing to do with the CP's.

7           Q     And the second item, Mr. Cohen.

8           A     That had to do with all of the CPs and Red Lion was  
9 one of the CPs.

10          Q     Let's move on to page 22 of the same exhibit.  
11 That's a November 9, 1990 invoice. Did you prepare that one?

12          A     Yes.

13          Q     Did any or all of the matters discussed here relate  
14 specifically and directly to the Red Lion CP?

15          A     My answer would be the same as before Mr. Schonman.

16          Q     And that is?

17          A     That the five CPs were five CPs and Red Lion was one  
18 of them, so all the services related to Red Lion, they all  
19 related to the other CPs.

20          Q     I have no further questions.

21               JUDGE CHACHKIN: Any redirect?

22               MR. BECHTEL: We have no redirect.

23               JUDGE CHACHKIN: You're excused, Mr. Cohen.

24               WITNESS: Thank you, Your Honor.

25               MR. BECHTEL: Our next witness, sir, is David

1 Gardner and he will be here at 9 o'clock, 9 a.m. tomorrow.

2 JUDGE CHACKIN: All right, I guess we're now  
3 recessed. I guess at some point the parties will enlighten me  
4 of where the Commission has specifically dealt with what's  
5 permissible and not permissible with an, allocations. As I've  
6 indicated, I don't know, Mr. Holt, whether you agree with it  
7 or not, but my reading of the, as I, I stated with the --  
8 case, I don't agree with you that the Commission has stated  
9 it's proper to, to allocate on a one-third basis if you have  
10 three stations. I don't agree that the Commission said that.  
11 And it doesn't seem to me, I don't know, it seems to be less  
12 reason to permit it and integrate it where you're dealing with  
13 three UHF television stations and three different communities,  
14 which obviously, if you're familiar with broadcast law,  
15 indicates that you have to have separate surveys in each  
16 community and you have all kinds of different engineering  
17 questions and financial questions and all the rest, how you  
18 could, now that stands for the proposition that the  
19 Commissioner said that you can allocate one-third. And I  
20 think the Bureau was correct in objecting and I think that the  
21 Commission, at least in the last sentence of that paragraph,  
22 makes clear, that the Commission determined that the amount  
23 which was being sought was, in fact, expended with the Boston  
24 application. Rather than saying we're doing this because we  
25 were the allocation so I think I was mistaken in reading to

1 readily in my order stating that the Commission had  
2 established that as a method. That was 1965, by the way. Are  
3 there any cases since then that anybody's aware of, dealing  
4 with any type of situation we have here?

5 MR. BECHTEL: We're not aware of any, sir, but on,  
6 on the matter of cases, after the lunch hour I passed to the  
7 attorneys and I'll give to you, DH Obelmeyer, that Mr.  
8 Berfield found, and that was at 34RR 2nd, 1317 of the Review  
9 Board and footnote 16. He thinks is --

10 JUDGE CHACHKIN: So you have a copy of that?

11 MR. BECHTEL: Yeah, I have. Oh, thank you.

12 JUDGE CHACHKIN: Is this for me a copy.

13 MR. BECHTEL: Everybody has a copy.

14 JUDGE CHACHKIN: Oh, everybody has a copy. But this  
15 doesn't deal with the situation of allocation, does it?

16 MR. BECHTEL: No, no this on the basis of, of  
17 overhead and office expenses. That was the paragraph of the  
18 letter.

19 JUDGE CHACHKIN: Yeah, relating to just one entity.

20 MR. BECHTEL: Correct.

21 JUDGE CHACHKIN: All right. All right, we'll recess  
22 until 9 a.m. tomorrow.

23 (Whereupon, at 2:22 p.m., the hearing was adjourned  
24 until 9:00 a.m. on Thursday May 5, 1994.)

25

**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**

IN THE MATTER OF TRINITY BROADCASTING OF FLORIDA ,INC.  
**Name** AND GLENDALE BROADCASTING COMPANY

MM DOCKET NO. 93-75  
**Docket No.**

WASHINGTON, D.C.  
**Place**

MAY 4, 1994  
**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 5558 through 5696, inclusive, are the true, accurate and complete transcript prepared from the reporting by MARYKAE FLEISHMAN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

May 13, 1994  
**Date**

Divina L. Cloney  
Divina L. Cloney, Transcriber  
Free State Reporting, Inc.

May 16, 1994  
**Date**

Diane S. Windell  
Diane S. Windell, Proofreader  
Free State Reporting, Inc.

May 16, 1994  
**Date**

Marykae Fleishman  
Marykae Fleishman, Reporter  
Free State Reporting, Inc.

**FREE STATE REPORTING, INC.**  
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Balt. & Annap. 974-0947